

UNITED STATES; DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA,

19-CR-227 (LJV-MJR)

vs.

JOSEPH BONGIOVANNI,
Defendant.

Buffalo, New York
August 5, 2024

-----x
JURY TRIAL EXCERPT - TESTIMONY OF PETER LEPIANE

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE

TRINI E. ROSS, UNITED STATES ATTORNEY
BY: JOSEPH M. TRIPI, AUSA
BY: NICHOLAS T. COOPER, AUSA
BY: CASEY L. CHALBECK, AUSA
Federal Centre
138 Delaware Avenue
Buffalo, New York 14202

FOR DEFENDANT:

SINGER LEGAL PLLC
BY: ROBERT CHARLES SINGER, ESQ.
80 East Spring Street
Williamsville, New York 14221
-and-
LAW OFFICE OF PARKER ROY MacKAY
BY: PARKER ROY MacKAY, ESQ.
3110 Delaware Avenue
Kenmore, New York 14217

COURT REPORTER:

Diane S. Martens
dmartensreporter@gmail.com

Lepiane - Direct - Cooper

P R O C E E D I N G S

* * *

(WHEREUPON, the following is an excerpt taken
from proceedings.)

PETER LEPIANE, called as a witness, being duly sworn,
testifies as follows:

MR. COOPER: May I inquire, Judge?

THE COURT: You may.

MR. COOPER: Thank you.

DIRECT EXAMINATION BY MR. COOPER:

Q Good afternoon, sir.

A Good afternoon.

Q Can you introduce yourself to our jury?

A Sure. My name is Peter Lepiane. I'm a supervising
United States Probation Officer in the Western District of
New York.

Q All right. Mr. Lepiane, I'm going to ask you to
speak nice and slowly and I'm going to try to do the same.
That way our court reporter can get everything typed down,
okay?

A Yes.

Q Okay. Where did you grow up at?

A I grew up in Niagara Falls, New York.

Q And you mentioned that you're working as a

Lepiane - Direct - Cooper

3:22PM 1 supervising probation officer?

2 A Yes, sir.

3 Q Can you describe for the jury a bit about your
4 education that led up to that job?

3:22PM 5 A Yes. I have a Criminal Justice Administration
6 Master's Degree, Niagara University.

7 Q And when you graduated with that degree, what sort
8 of work did you get into?

9 A I got into this work I started as a probation
3:22PM 10 officer assistant in 2006.

11 Q And what are the duties and responsibilities of a
12 probation officer assistant?

13 A So we supervise individuals who are released to the
14 community.

3:22PM 15 Q Did you remain a supervisory -- a probation officer
16 assistant, rather?

17 A No, in 2007 I was promoted to a probation officer.
18 Then to a specialist, and now I'm a supervisor since 2018.

19 Q Okay. And so during your progression through the
3:23PM 20 office, have your responsibilities changed over the years?

21 A Yes.

22 Q And how have your responsibilities changed now that
23 you're a supervisor?

24 A So now I'm responsible and supervise officers that
3:23PM 25 supervise individuals that are released to the community.

Lepiane - Direct - Cooper

3:23PM 1 Q Would it be fair to say that, as a supervising
2 probation officer here in federal court, you're responsible
3 for supervising people who's been sentenced for a conviction
4 of a crime?

3:23PM 5 A Yes, sir.

6 Q I want to speak with you now about how a person
7 ends up getting sentenced. Can you tell the jury: How does
8 a person get sentenced in the context of a criminal case?

9 A So, in a criminal case, following a plea or a
3:23PM 10 conviction, an individual is sentenced before a federal judge
11 to either incarceration followed by supervised release or a
12 term of probation.

13 Q You said incarceration followed by supervised
14 release. Is supervised release always or generally a part of
3:23PM 15 a sentence after a person is released from incarceration?

16 A Yes.

17 Q And what does it mean to be on supervised release?

18 A So, when you're on supervised release, there's a
19 period of time that you're subject to conditions that the
3:24PM 20 Court has ordered.

21 Q And what's the purpose of that?

22 A To make sure that someone is not committing any new
23 crime in the community but also to help them transition from
24 custody to regular life.

3:24PM 25 Q Who decides what conditions a person has -- is

Lepiane - Direct - Cooper

3:24PM 1 subject to when they're on supervised release?

2 A The sentencing judge.

3 Q And is that a federal judge?

4 A Yes.

3:24PM 5 Q Okay. And does the probation office -- your
6 office -- make recommendations to that federal judge?

7 A Yes.

8 Q Are there something called "standard conditions"?

9 A Yes.

3:24PM 10 Q What's an example of that?

11 A Standard condition would be they have to report
12 police contact within 72 hours. You can't leave the judicial
13 district that you're in. You have to report when instructed
14 to do so.

3:24PM 15 Q Can there also be specific conditions tailored to
16 an individual?

17 A Yes. The Court will set special conditions that
18 are tailored to the individual based on their characteristics
19 or the crime they were convicted of.

3:25PM 20 Q And then who or what agency is responsible for
21 ensuring that a person who's on supervised release is
22 complying with those conditions?

23 A The U.S. Probation Office.

24 Q Is that you?

3:25PM 25 A It is.

Lepiane - Direct - Cooper

3:25PM 1 Q Okay. And the people you work with?

2 A Yes.

3 Q Does your office have the ability and the authority

4 to investigate suspected violations?

3:25PM 5 A Yeah, we're required to.

6 Q Is that your job?

7 A It's what we swear to, yes.

8 Q Okay. And do you work -- in the context of

9 investigating those suspected violations, do you often work

3:25PM 10 with members of other law enforcement agencies?

11 A We do, yes.

12 Q Can you describe for the jury how it would be that

13 you as a probation officer would interact with a member of

14 another law enforcement agency?

3:25PM 15 A Yeah. So, as part of our job we have to stay

16 informed as to how a person's doing in relation to their

17 conditions of supervised release. Our agency is very small

18 so we like the resources of law enforcement in the community

19 of where the person lives. So we'll reach out to them when

3:26PM 20 we get information that maybe something might not be going

21 right or opposite.

22 Q Are there instances during the carrying out of your

23 responsibilities when you'll share information that you have

24 about a supervisee with members of another law enforcement

3:26PM 25 agency?

Lepiane - Direct - Cooper

3:26PM 1 A Yes.

2 Q And can you give an example of how that would
3 occur?

4 A Sure. We get suspicion or we get information from
3:26PM 5 an outside source that a person we're supervising is not
6 doing the right thing. We'll reach out to local law
7 enforcement for assistance and also to see if they have any
8 information that can help us.

9 Q Okay. And then I think you started to touch on
3:26PM 10 this but on the flip side of that coin, are there times
11 during the course of your duties when you're receiving
12 information from other outside law enforcement agencies?

13 A Yeah. We have a shared interest in community
14 protection with law enforcement. So, we'll also receive
3:26PM 15 information from them relating to how someone's doing with
16 their supervised release conditions.

17 Q Now you mentioned that sometimes you interact or
18 interface with local law enforcement, is that correct?

19 A Yes.

3:27PM 20 Q Do you also interact and share information with
21 federal law enforcement?

22 A Yes.

23 Q What are some of the federal law enforcement
24 agencies that you work with?

3:27PM 25 A We've worked with Secret Service, FBI, DEA, Customs

Lepiane - Direct - Cooper

3:27PM 1 and Border Patrol, ATF. All of them.

2 Q Now you just described the manner in which your
3 office kind of works in concert with some of those other law
4 enforcement agencies. Would you consider that to be a
3:27PM 5 necessary part of your job?

6 A Yes, very necessary.

7 Q Okay. And when in the course of your job you learn
8 information from a member of a federal law enforcement
9 agency, do you accept it as gospel?

3:27PM 10 A Yeah, we believe it, yes.

11 Q You take it to be true?

12 A Yes.

13 Q Is there a trust that's inherent in that
14 responsibility?

3:27PM 15 A Yes.

16 Q So if an FBI told you something about a supervisee,
17 you're not going to go and investigate whether what they told
18 you is true on your own, right?

19 A Right.

3:28PM 20 Q Okay. Is that kind of trust that's inherent
21 between yourself as a probation officer and other law
22 enforcement agencies important for you to be able to
23 effectively do your job?

24 A Yeah. It's necessary.

3:28PM 25 Q Is that something that just you do, Pete, or does

Lepiane - Direct - Cooper

3:28PM 1 everybody do that in your office?

2 A Our office does.

3 Q Are you familiar with a person by the name of
4 Joseph Bongiovanni?

3:28PM 5 A I am.

6 Q How do you know that person?

7 A I worked with Joe Bongiovanni on several cases.

8 Q Do you know what his job title was before he
9 retired?

3:28PM 10 A Yeah, he was a special agent for the DEA.

11 Q And you said you've worked on cases with him
12 before?

13 A Yes, sir.

14 Q Have you interacted with him in person before?

3:28PM 15 A Yes.

16 Q Are you familiar with what he looks like?

17 A Yes.

18 Q Is he in court today?

19 A Yes.

3:28PM 20 Q Can you just point him out and identify an article
21 of clothing that he's wearing for the record?

22 A Yeah, sitting at the defense table. He's got a
23 blue suit on, some glasses.

24 MR. COOPER: Indicating the defendant, Judge?

3:29PM 25 THE COURT: It does.

Lepiane - Direct - Cooper

3:29PM 1 **MR. COOPER:** Thank you.

2 **Q** Do you know an individual by the name of Peter
3 Gerace?

4 **A** Yes.

3:29PM 5 **Q** How do you know that person?

6 **A** Our office supervised him.

7 **Q** Did you become assigned personally to supervise
8 Peter Gerace?

9 **A** I did, yes.

3:29PM 10 **Q** Can you tell the jury a little bit about how you
11 became the supervising officer for Peter Gerace and when?

12 **A** Sure. I was the duty officer on August 31st, 2009.
13 Our office will have duty officers assigned daily so that
14 there's somebody in the office just in case there's people on
3:29PM 15 vacation or leave. That happened to be me that day on
16 August 31st. I received a phone call, duty phone call, from
17 Agent Tom Herbst with the FBI who indicated that he had
18 information regarding Peter Gerace that he wanted to share.

19 **Q** Got it. Let's pause right there for a second.

3:29PM 20 On August 31st of 2009 you're the duty officer?

21 **A** Yes, sir.

22 **Q** Okay. When you walked into work that day, was it
23 your job to supervise Peter Gerace?

24 **A** No.

3:30PM 25 **Q** When your office received that duty call from

Lepiane - Direct - Cooper

3:30PM 1 Special Agent Herbst, was the supervising officer for Gerace
2 in the office that day?

3 A No, he, he had actually -- was no longer with our
4 office.

3:30PM 5 Q And, so, is it fair to say, as the duty officer, it
6 became your job to take that call?

7 A I took the call, yep.

8 Q Okay. And we're going to circle back in a moment
9 to the information you learned from Special Agent Herbst.

3:30PM 10 But, first, I want to ask a little bit about your
11 recordkeeping.

12 Does your job as a probation officer require that
13 you keep records and reports?

14 A It does.

3:30PM 15 Q What are your records or reports called?

16 A They're called chronological records.

17 Q Do you have a short name for that?

18 A It's called chronos.

19 Q Chronos?

3:30PM 20 A Chronos.

21 Q That's C-H-R-O-N-O-S?

22 A Yes.

23 Q Okay. What gets reported in a chrono?

24 A Any contact that we have with individuals or about
3:31PM 25 individuals.

Lepiane - Direct - Cooper

3:31PM 1 Q So if you have a conversation with a supervisee,
2 does that go in a chrono?

3 A Yes.

4 Q If you get a call from Buffalo Police Department
3:31PM 5 talking about something your supervisee did, does that go in
6 a chrono?

7 A Yes.

8 Q Are those chrono logs made and kept in the course
9 of your duties as a U.S. Probation Officer?

3:31PM 10 A Yes.

11 Q Are they routinely kept as a part of U.S.
12 Probation's usual practice?

13 A Yes.

14 Q And do you log the information that you put in the
3:31PM 15 report at or near the time that you learn of it?

16 A Yes.

17 Q Did you create chrono entries related to your
18 supervision of Peter Gerace?

19 A I did.

3:31PM 20 Q You started to tell us that you received a phone
21 call from Special Agent Herbst; is that correct?

22 A Yes.

23 Q Okay. And this was August 31st of 2009?

24 A Yes.

3:31PM 25 Q What action did you take as a result of receiving

Lepiane - Direct - Cooper

3:31PM 1 that phone call?

2 A So I received the phone call and then I actually

3 met with Agent Herbst in my office to discuss the information

4 he had regarding Peter Gerace.

3:32PM 5 Q Okay. Let me stop you right there.

6 Did the information that Special Agent Herbst told

7 you on that phone call impact your activities going forward?

8 A Yes.

9 Q Okay. What did Special Agent Herbst tell you?

3:32PM 10 A He said that Peter Gerace was operating Pharaoh's

11 Gentlemen's Club which was a place that he had been told in

12 the past he was not allowed to work at. So that would have

13 been a violation of one of his conditions.

14 Q So, as his -- as a probation officer, are you able

3:32PM 15 to see what conditions someone has to follow?

16 A Yes.

17 Q Was one of Peter Gerace's conditions having to do

18 with where he could and couldn't work?

19 A Yes. He had to work at an approved employment.

3:32PM 20 And that employment wasn't approved because the state liquor

21 authority had denied him to be able to work there. So we

22 also instructed him not to do so.

23 Q So was Peter Gerace directly instructed by U.S.

24 Probation that he couldn't work at Pharaoh's?

3:32PM 25 A Yes.

Lepiane - Direct - Cooper

3:32PM 1 Q In addition to this information about Gerace
2 working at Pharaoh's, did Special Agent Herbst share any
3 information with you related to drugs?

4 A Yes. He said that drug use and distribution was
3:33PM 5 happening at the club.

6 Q Okay. Is that something that would be concerning
7 to you about somebody you're supervising?

8 A Very concerning.

9 Q Okay. As a result of that first conversation that
3:33PM 10 you had with Special Agent Herbst, you indicated that you met
11 with him again in the future?

12 A Yes.

13 Q Okay. And did you end up beginning an
14 investigation, in your capacity as a probation officer, into
3:33PM 15 whether these allegations were true?

16 A Yes. So I took the information that was provided.
17 I talked to my direct supervisor and we started an
18 investigation into whether or not he was in violation of his
19 conditions. That investigation entailed surveillance

3:33PM 20 operations and other matters to try to determine whether or
21 not he was, in fact, working there.

22 Q Now, is that surveillance that you personally
23 engaged in?

24 A Yes.

3:33PM 25 Q And you mentioned earlier that you have a pretty

Lepiane - Direct - Cooper

3:34PM 1 small office; is that correct?

2 A Yes.

3 Q Is it common for you to work with other federal law
4 enforcement agencies in that sort of situation?

3:34PM 5 A Yeah, it's necessary.

6 Q What law enforcement agency was kind of associated
7 with your investigation into Pharaoh's and Peter Gerace?

8 A FBI.

9 Q Is that because Special Agent Herbst brought you
3:34PM 10 the information?

11 A Yes. They also were the underlying case agent for
12 Mr. Gerace's case.

13 Q Are you referring to what ended up causing him to
14 be on post-release supervision?

3:34PM 15 A Yes.

16 Q Okay. Did there come a time after your
17 surveillance in the beginning of your investigation when you
18 decided to conduct a search of Pharaoh's Gentlemen's Club?

19 A Yes.

3:34PM 20 Q Okay. Now, is that something that you do
21 occasionally as a probation officer?

22 A Yes.

23 Q Is it slightly different for you as a probation
24 officer to search a location than for a federal agent working
3:35PM 25 on a case on their own?

Lepiane - Direct - Cooper

3:35PM 1 A Yes. So, one of the special conditions that can be
2 imposed and was imposed in this case is a search condition
3 which allows us to search a person's property, a place of
4 residence, their actual person, and anything else they have
3:35PM 5 under their control.

6 Q So is that something that was a condition of Peter
7 Gerace's supervised release?

8 A It was.

9 Q Do you remember what day you ultimately
3:35PM 10 participated in this search of Pharaoh's Gentlemen's Club?

11 A Yes, it was October 31st, 2009.

12 Q Is that, give or take, about two months after you
13 initially got the information?

14 A Yes.

3:35PM 15 Q Did you go in there and search it all by yourself?

16 A No.

17 Q Who went with you?

18 A Myself, other members of our Search Enforcement
19 Team, the U.S. Probation Office Search Enforcement Team. We
3:35PM 20 had the assistance of the FBI, and also Cheektowaga police.

21 Q And where is Pharaoh's Gentlemen's Club located, do
22 you know generally?

23 A I believe it's in Cheektowaga. It's out near Exit
24 49.

3:36PM 25 Q I'm not asking you the --

Lepiane - Direct - Cooper

3:36PM 1 A Oh.

2 Q -- exact address. It's in Cheektowaga?

3 A Yes.

4 Q Is it kind of a big location?

3:36PM 5 A Yes.

6 Q So there's a bunch of members of law enforcement

7 both from probation and the FBI, is that fair?

8 A Yes.

9 Q When you arrive at Pharaoh's Gentlemen's Club to

3:36PM 10 conduct the search, what was your role?

11 A So, I was the case officer. So the hope was that

12 he would just open the door and come out and that I would

13 make contact with him. His car was in the driveway -- or the

14 parking lot of the club. He didn't come out. So,

3:36PM 15 Cheektowaga police did a welfare check -- because we knew he

16 was in there -- to make sure he was okay, and he opened the

17 door. And then I went in with the rest of the team and

18 searched.

19 Q And what time of day approximately was it?

3:36PM 20 A It was in the morning.

21 Q Okay. Was part of what you did there administer a

22 drug test on Peter Gerace?

23 A Yes.

24 Q Did Gerace make any statements to you about drug

3:37PM 25 use?

Lepiane - Direct - Cooper

3:37PM 1 A Yeah, he admitted to using cocaine the night
2 before.

3 Q And what was the result of the test that you
4 conducted?

3:37PM 5 A He was positive for cocaine use.

6 Q Was FBI Special Agent Tom Herbst present for that
7 search at Pharaoh's Gentlemen's Club?

8 A Yes.

9 Q Was FBI Task Force Officer Rob Cottrell present for
3:37PM 10 that search?

11 A I believe so but I'm not certain.

12 Q Now was it one of the conditions of Peter Gerace's
13 release that he not use cocaine?

14 A Yeah, he -- they can't use illegal drugs.

3:37PM 15 Q So that was a violation, right?

16 A Yes.

17 Q Did you continue your investigation into whether
18 Peter Gerace had violated his conditions?

19 A Yeah. So we searched the club. We were looking
3:37PM 20 for documents or anything that would tie him to operating or
21 working at the Gentlemen's Club. And we found various
22 documents with his name on it and the club's name on it. In
23 his wallet he had credit cards for the club in his name. He
24 also had keys to the establishment.

3:38PM 25 Q What, if anything, did you do as a result of the

Lepiane - Direct - Cooper

3:38PM 1 evidence that you found on that search?

2 A So, we collected the evidence and I told him that
3 I'd be in touch with him and -- that was a Saturday, and then
4 the next Monday I talked to my supervisor about what we were
3:38PM 5 going to do.

6 Q And is that kind of the common order of events that
7 you would talk to a supervisor next?

8 A Yeah. So, it always depends on the violation and
9 the risk that it presents. And in this case it could be
3:38PM 10 considered a technical violation that he's working somewhere
11 he's not supposed to and the danger to the community is not
12 high enough that we need to go ask the judge for a warrant on
13 that day. So that's normally what we would do is then go
14 back and talk to our supervisor.

3:38PM 15 Q And did you notify the Court of this information
16 the following Monday?

17 A No.

18 Q And is that some of the discretion that you're
19 allowed, and expected, to exercise in carrying out your job?

3:39PM 20 A Yeah. So the Court gives us discretion, as I
21 stated, based on what the risk of danger would be to the
22 community or the risk of the person fleeing. We try to take
23 action to bring someone back into compliance before just
24 sending someone to jail and that's the discretion that the
3:39PM 25 Court allows us to have.

Lepiane - Direct - Cooper

3:39PM 1 Q Now, to your knowledge, was the DEA present and
2 participating in your search at Pharaoh's Gentlemen's Club?

3 A No, they were not.

4 Q Were they notified in advance of the search of
3:39PM 5 Pharaoh's Gentlemen's Club?

6 A Not by my office, no.

7 Q After the search of the Pharaoh's Gentlemen's Club,
8 did you get contacted from somebody at the DEA regarding
9 Peter Gerace?

3:39PM 10 A Yes.

11 Q Who?

12 A Agent Bongiovanni.

13 Q What was the nature of that communication?

14 A Agent Bongiovanni called me to say that Peter
3:40PM 15 Gerace had reached out to him. He said that Peter Gerace
16 wanted to potentially cooperate to lessen any violation
17 sentence that would occur.

18 I told him that an individual who's on supervised
19 release can't actively cooperate without the Court's
3:40PM 20 permission. It's one of their conditions.

21 And he said that in the past, he'd been a
22 confidential source of information for him and he wanted to
23 meet with DEA to potentially lessen his sentence.

24 I told him we don't make any promises and it's
3:40PM 25 ultimately going to be up to the judge.

Lepiane - Direct - Cooper

3:40PM 1 Q During that phone call with the defendant, did he
2 tell you that he was friends with Peter Gerace?

3 A No.

4 Q Did he tell you they hung out?

3:40PM 5 A No.

6 Q Did he tell you they went to dinner together?

7 A No.

8 Q Did he tell you they text messaged each other
9 socially?

3:40PM 10 A No.

11 Q Did he tell you they exchanged phone calls
12 regularly?

13 A No.

14 Q None of that?

3:40PM 15 A No.

16 Q In the aftermath of the search at Pharaoh's, did
17 you continue to stay in touch with Special Agent Herbst from
18 the FBI?

19 A Yes. I talked to him frequently regarding what our
3:41PM 20 ultimately probation was going to do and how his
21 investigation was going.

22 Q Based on your conversations with Special Agent
23 Herbst, did you develop an understanding that he was
24 interested in developing a case and charging Peter Gerace?

3:41PM 25 A Yeah. He told me that they were investigating him

Lepiane - Direct - Cooper

3:41PM 1 for potential drug conspiracy, yes.

2 Q And after that conversation that you had with the
3 defendant, did you have future communications with Special
4 Agent Herbst about a meeting between Special Agent Herbst and
3:41PM 5 the defendant, Mr. Bongiovanni?

6 A Yeah. Actually the day before Agent Bongiovanni
7 called me, Agent Herbst called to say that Gerace had reached
8 out to the DEA about potentially cooperating. So then after
9 the conversation I had with Agent Bongiovanni, I continued to
3:42PM 10 touch base to see whether or not that meeting had occurred
11 and what the status was.

12 Q Now, can that sometimes -- generally in your job,
13 can that factor into how you would handle a situation of a
14 suspected violation if somebody's cooperating?

3:42PM 15 A It doesn't influence what probation does. It could
16 be something that the defense and the prosecuting attorney
17 present to the judge as mitigating factor at the time of
18 sentencing on a violation. But it doesn't influence what
19 we do.

3:42PM 20 Q So as far as you're concerned, it's business as
21 usual, is that fair to say?

22 A Yes.

23 Q How did your probation investigation into Peter
24 Gerace and his activity at Pharaoh's ultimately resolve?

3:42PM 25 A So, after our investigation, we decided to present

Lepiane - Direct - Cooper

3:42PM 1 to the Court to have his supervision modified so that he'd be
2 on an ankle bracelet. He had roughly four months left on
3 supervised release so we asked the Court to put him on the
4 ankle bracelet for the remainder of his time, which the Court
3:43PM 5 ultimately agreed to.

6 Q Did you do that because the defendant called you
7 and spoke to you about it?

8 A No.

9 Q Is that what you would have done anyway?

3:43PM 10 A Yes.

11 Q Did you provide any preferential treatment at all
12 to Gerace as a result of the phone call you got from the
13 defendant?

14 A No.

3:43PM 15 MR. COOPER: No more direct, Judge.

16 THE COURT: Folks, we're going to take our afternoon
17 break now.

18 So please remember my instructions about not talking
19 with anyone about the case including each other and not

3:43PM 20 making up your mind.

21 See you back here in about ten or 15 minutes.

22 (WHEREUPON, jury excused.)

23 THE COURT: Anything for the record?

24 MR. SINGER: No, your Honor.

3:44PM 25 THE COURT: Anything from the government?

Lepiane - Cross - Singer

3:44PM 1 **MR. COOPER:** No, thank you, Judge.
2 **THE COURT:** Okay. See you in a few minutes.
3 (WHEREUPON, recess taken.)
4 (Open court, defendant present.)
4:08PM 5 **THE CLERK:** We're back on the record for the
6 continuation of the jury trial in 19-CR-227, United States of
7 America v. Joseph Bongiovanni.
8 All counsel and parties are present.
9 **THE COURT:** Okay. Anything from the government?
4:09PM 10 **MR. COOPER:** No, thank you, Judge.
11 **THE COURT:** Ready to go?
12 **MR. SINGER:** Yes, Judge.
13 **THE COURT:** Let's bring them back, please.
14 (WHEREUPON, jury present.)
4:09PM 15 **THE COURT:** The record will reflect that all our jurors
16 are present.
17 I remind the witness that he's still under oath.
18 And, Mr. Singer, you may begin.
19 **MR. SINGER:** Thank you, Judge.
4:10PM 20 **CROSS-EXAMINATION BY MR. SINGER:**
21 **Q** Good afternoon, Officer Lepiane.
22 **A** Good afternoon, Mr. Singer.
23 **Q** I got to admit: When we saw each other in court a
24 week and a half ago, I'm wearing the same ensemble that I am
4:10PM 25 today. So I apologize for making a fashion faux pas. But I

Lepiane - Cross - Singer

4:10PM 1 notice you didn't. So good on you.

2 So I wanted to ask you a couple of questions about
3 your testimony.

4 Before we get to that, though, you had mentioned
4:11PM 5 "chronos" in your testimony on direct; do you remember that?

6 A Yes, sir.

7 Q And so are chronos, they're chronological reports
8 that you generate during the course your supervision, is that
9 right?

4:11PM 10 A Chronological records, yes.

11 Q And what's the purpose of the chronos? Why do you
12 keep chronos?

13 A If you think of it like a journal, right, about the
14 person who's on supervised release. It's a record of all our
4:11PM 15 contact with them. So we supervise several individuals. So,
16 it's hard to remember everything about every single person so
17 we make sure we take good notes.

18 Q And you had a chance to review your chronological
19 records before you testified here today?

4:11PM 20 A Yes, sir.

21 Q And I know we're talking about an incident that
22 occurred more than 15 years at this point, right?

23 A Yes.

24 Q So, was that a way to refresh your memory with your
4:11PM 25 testimony so you could testify as accurately as possible?

Lepiane - Cross - Singer

4:11PM 1 A Yes.

2 Q In the chronological reports that you were taking a
3 look at before you testified today, they were roughly about
4 14 pages long or so?

4:12PM 5 A Roughly.

6 Q And sometimes you had a couple of sentences on one
7 particular event?

8 A Yes.

9 Q But other times you had longer paragraphs about
4:12PM 10 things that happened?

11 A Yes.

12 Q Okay. And that's something that aided your
13 testimony here today, correct?

14 A Yes.

4:12PM 15 Q Okay. So, let's get down to a little bit of the
16 facts. So, you were supervising Peter Gerace on supervision
17 but not a hundred percent of the time; is that right?

18 A I didn't supervise him his whole term. I started
19 on August 31st of 2009.

4:12PM 20 Q Okay. And that was based on the call that you got
21 from FBI Special Agent Thomas Herbst, is that right?

22 A Yes.

23 Q You mentioned that you were the duty officer that
24 day?

4:12PM 25 A Yes.

Lepiane - Cross - Singer

4:12PM 1 Q So, kind of the guy who picked up the phone, for
2 lack of a better word?

3 A Yes.

4 Q Okay. And, so, during that call on the 31st of
4:12PM 5 August in 2009, that's when Special Agent Herbst from the FBI
6 talked to you about information that he had received about
7 Peter Gerace, correct?

8 A Yes.

9 Q And so you mentioned a couple different things.
4:13PM 10 You mentioned that there was information that he had that
11 Peter Gerace may have been using some illegal substances, is
12 that right?

13 A Yes.

14 Q And one of those, in particular, was cocaine, is
4:13PM 15 that right?

16 A Yes.

17 Q And you also had information provided by Special
18 Agent Herbst that Peter Gerace may have been distributing
19 cocaine inside of Pharaoh's Gentlemen's Club?

4:13PM 20 A That -- the information was that drugs were being
21 distributed from there, yes.

22 Q Okay. And so you also understood that Mr. Herbst
23 gave you some information that Peter Gerace may have been
24 frequenting Pharaoh's Gentlemen's Club, which was a violation
4:13PM 25 of his conditions.

Lepiane - Cross - Singer

4:13PM 1 A The information was that he was owning and
2 operating it, so, yes, he would have been frequenting it,
3 as well.

4 Q Okay. And you, after learning all of that, did you
4:13PM 5 offer up the fact that Peter Gerace had a search condition as
6 part of his conditions or did Special Agent Herbst ask you
7 about that?

8 A So I don't specifically remember either/or. It
9 could have come up in conversation what are his conditions
4:14PM 10 and I would have listed off his conditions. But I don't
11 specifically ask -- remember being asked that or telling
12 that.

13 Q Okay. But you do recall that that came up as part
14 of the topic of conversation, correct?

4:14PM 15 A It would have, yes.

16 Q And one of the things that the two of you discussed
17 as a result of that, was that you needed to establish that
18 Peter Gerace was at Pharaoh's Gentlemen's Club to execute
19 that search condition, correct?

4:14PM 20 A No. We just needed to establish he had control
21 over the property.

22 Q And, so, when you talked about the investigation
23 that you followed up on after this phone call, part of that
24 was related to establishing Peter Gerace's control of
4:14PM 25 Pharaoh's Gentlemen's Club?

Lepiane - Cross - Singer

4:14PM 1 A Yes.

2 Q And establishing that fact would allow you to

3 conduct a search there pursuant to the search condition?

4 A Yes.

4:14PM 5 Q Okay. And, so, Mr. Cooper asked you about how it's

6 a little bit different the search condition that you have as

7 a probation officer versus what a law enforcement might apply

8 for in a search warrant?

9 A Yes.

4:15PM 10 Q It's a little easier to use your search condition

11 to search a place, fair to say?

12 A It's -- we don't need probable cause which is what

13 law enforcement needs.

14 Q Okay. And, so, the plan that you two develop,

4:15PM 15 either that day or over the course of the next several days,

16 is that some type of surveillance is going to be conducted to

17 establish Peter Gerace having ownership and control of the

18 Pharaoh's Gentlemen's Club, correct?

19 A So, the plan wasn't -- you phrase it like the plan

4:15PM 20 "you two" established. It was our plan, the probation

21 office's plan, and we asked for assistance from the FBI.

22 Q Okay. Understood.

23 A If that makes sense.

24 Q No, it does. And I don't want to misstate

4:15PM 25 anything.

Lepiane - Cross - Singer

4:15PM 1 A Okay.

2 Q So, it was your plan that you needed to establish
3 some type of surveillance to establish the fact that Peter
4 Gerace had control of Pharaoh's?

4:15PM 5 A Yes.

6 Q And you had asked FBI to support you in this
7 endeavor?

8 A Yes.

9 Q And Special Agent Herbst had agreed to that
4:15PM 10 support?

11 A Yes.

12 Q And, so, over the course of the next 60 or so days,
13 both your office and FBI conduct surveillance of Peter
14 Gerace?

4:16PM 15 A Yes.

16 Q And also at Pharaoh's Gentlemen's Club?

17 A Yes.

18 Q And there's other partners in law enforcement,
19 local ones, that also assist in this particular

4:16PM 20 investigation, correct?

21 A Yes.

22 Q So, I think you had mentioned on direct testimony
23 Cheektowaga Police Department was one of those people --

24 A Yes.

4:16PM 25 Q -- who established surveillance?

Lepiane - Cross - Singer

4:16PM 1 A Yes.

2 Q Okay. And there is discussions that all of you
3 partners in law enforcement have regarding the surveillance
4 efforts, correct?

4:16PM 5 A We discuss -- yeah, we would discuss what's being
6 found during the surveillance, yes.

7 Q Okay. And that all culminates on Halloween of
8 2009, so, October 31st of 2009 when you are able to conduct a
9 search of Pharaoh's Gentlemen's Club, is that right?

4:16PM 10 A Yes. Once we gather all the information, we
11 determined he had control over the property, we plan a search
12 for that day October 31st, 2009, yep, that morning.

13 Q Okay. And you mentioned there were members of the
14 probation department who were part of that search team?

4:17PM 15 A Yes.

16 Q Also you mentioned that FBI Special Agent Herbst
17 was a member of that search team?

18 A He was there assisting us. So our -- our team is
19 the one who has the authority to be there.

4:17PM 20 Q Mm-mm.

21 A We'll have several law enforcement agencies assist
22 us with that, and on that day, yes, FBI Special Agent Herbst
23 was there.

24 Q Okay. And he was, he was somebody -- there were

4:17PM 25 also other agencies that were there that were helping you,

Lepiane - Cross - Singer

4:17PM 1 as well?

2 A Yes.

3 Q I think you mentioned that Cheektowaga Police
4 Department was the ones who knocked on the door --

4:17PM 5 A Yeah.

6 Q -- to eventually raise his attention?

7 A Yes, the welfare check, yes.

8 Q And when all of you -- when Peter Gerace comes to
9 the door to answer, is that when you engage Peter Gerace in
4:17PM 10 your role as the leader?

11 A So I don't specifically remember 15 years ago how
12 that played out but I would assume as the case officer, I
13 would have contact with him, yes.

14 Q Okay. There is eventually a discussion that occurs
4:18PM 15 between you and Peter Gerace, right?

16 A Yes.

17 Q And one of the things that you wanted to do was to
18 test him for the presence of any type of illegal substances
19 he may have ingested?

4:18PM 20 A Yes.

21 Q And that's when he made that admission that he had
22 used cocaine on the previous evening?

23 A Yes.

24 Q And you mentioned that you had also tested him with
4:18PM 25 your, your -- your testing equipment?

Lepiane - Cross - Singer

4:18PM 1 A Yes.

2 Q And that returned a positive result?

3 A Cocaine, yes.

4 Q And, so, are you asking other questions of Peter

4:18PM 5 Gerace during the course of time that you're in the building?

6 A Yeah. I discussed with him the allegation that he

7 had been working there, yes.

8 Q Okay. Now, I know that one of your other

9 responsibilities was also to help conduct the search, or

4:18PM 10 conduct the search of Pharaoh's?

11 A Yes.

12 Q And that was looking for documentation which might

13 establish him being there; is that right?

14 A Him being the owner and operator, yes.

4:18PM 15 Q And you mentioned that you found some credit cards

16 that would be indicative of that, correct?

17 A Yes.

18 Q You also found some paperwork in the office that

19 may be indicative of that?

4:19PM 20 A Yes.

21 Q And Special Agent Herbst from the FBI, I know he

22 doesn't work for the probation office but he's also present

23 during the time that you're in the building, correct?

24 A Yes.

4:19PM 25 Q And it was your understanding that one of the

Lepiane - Cross - Singer

4:19PM 1 reasons why he was there was so that he could help build some
2 rapport with Peter Gerace?

3 A I know that he was -- he was there assisting us but
4 I know he had his own investigation into Peter Gerace.

4:19PM 5 Q Okay. So he had his own objectives and
6 expectations when he was there?

7 A I can't speak to his objectives but he had his own
8 investigation, yes.

9 Q Okay. And that was separate from your violation --

4:19PM 10 A Yes.

11 Q -- investigation, correct?

12 A Yes.

13 Q When you were searching Pharaoh's Gentlemen's Club
14 that day, did you find any type of cocaine on the premises?

4:19PM 15 A I don't remember, no.

16 Q Did you find any other type of narcotics on the
17 premises?

18 A I don't believe so.

19 Q So, after conducting the search and the interview
4:20PM 20 and the test of Mr. Gerace that day, you indicated that it
21 was your decision to go back to the office and discuss what
22 to do next with your supervisor?

23 A Yeah. We didn't do it that day but that was what
24 we decided we were going to do.

4:20PM 25 Q Okay.

Lepiane - Cross - Singer

4:20PM 1 A So, two days later, yeah.

2 Q Because you had mentioned that part of the

3 violations that you had -- became aware of that day --

4 involved him working at a place that he shouldn't be working

4:20PM 5 at, correct?

6 A Yes.

7 Q As well as ingesting cocaine when he shouldn't be

8 doing that?

9 A Yes.

4:20PM 10 Q And I think you termed those as technical

11 violations?

12 A They could be considered technical violations, yes.

13 Q But --

14 A I'm not a fan of the word but yes.

4:20PM 15 Q But the reason why they're termed technical

16 violations is because they're ones that, as you said, don't

17 necessarily warrant immediate incarceration, correct?

18 A Correct, yes.

19 Q Because one of the goals that you have is you want

4:21PM 20 to try to rehabilitate someone when they're on supervised

21 release, correct?

22 A Yes.

23 Q And, so, given what had happened here, it was your

24 decision at that point in time that you may want to try to

4:21PM 25 put him into some type of stricter monitoring conditions to

Lepiane - Cross - Singer

4:21PM 1 help him get along?

2 A Yeah. We were going to see if there were other
3 avenues we can take that didn't involve him ending up in jail
4 that could bring him back into compliance, yes.

4:21PM 5 Q Okay. So fast forward two days later. You stated
6 that on November 2nd of 2009 you had received a call from
7 Agent Herbst that Peter Gerace had contacted the DEA and the
8 FBI had been contacted by DEA?

9 A The phone call I got from Agent Herbst was on
4:21PM 10 November 2nd and that phone call was Agent Herbst telling me
11 that Peter Gerace had reached out to the DEA. I don't really
12 know how that -- he found out about that but that was the
13 information he told me.

14 Q Okay. So he told you that Peter Gerace reached out
4:21PM 15 to the DEA?

16 A Yes.

17 Q And then there was also a discussion that there was
18 going to be some type of meeting between the DEA, the FBI,
19 and Peter Gerace to follow up on that?

4:22PM 20 A Yes.

21 Q And in addition on that day, you had also made
22 contact with Assistant United States Attorney Tony Bruce; is
23 that right?

24 A Yes.

4:22PM 25 Q And Tony Bruce is somebody who worked in the

Lepiane - Cross - Singer

4:22PM 1 prosecutor's office?

2 A Yes.

3 Q And you were updating Mr. Bruce with regard to what
4 was going on with the violation; is that right?

4:22PM 5 A Yes. So, Tony Bruce was the prosecuting AUSA on
6 Peter Gerace's underlying case. So we work in conjunction
7 with their office regarding violations.

8 Q Okay. So you were giving an update to the U.S.
9 Attorney's Office about the violation that you had witnessed
4:22PM 10 and observed and investigated?

11 A Yes.

12 Q And then you mentioned that the next day on
13 November the 3rd of 2009, that's when you get a call from
14 Special Agent Bongiovanni?

4:22PM 15 A Yes.

16 Q And he had a conversation with you about Peter
17 Gerace and possible cooperation, is that right?

18 A Yes.

19 Q And the purpose of that was to potentially lessen
4:23PM 20 the sanctions for his violation?

21 A Yes.

22 Q And you had indicated to Agent Bongiovanni that if
23 that was going to happen, it was going to be something that
24 would at least require court approval because he was on
4:23PM 25 supervision?

Lepiane - Cross - Singer

4:23PM 1 A In order for them to actively cooperate, they have
2 to get Court permission to do that because they're on
3 supervision, yes.

4 Q And you also mentioned that Mr. Bongiovanni, when
4:23PM 5 he was talking to you about Gerace, had indicated that he was
6 a source of information, is that right?

7 A He said he was a confidential source of
8 information, yes.

9 Q Okay. Now, on this call you didn't get the
4:23PM 10 impression that the DEA or Mr. Bongiovanni was interested in
11 investigating Peter Gerace, correct?

12 A Correct.

13 Q And the meeting between Peter Gerace and the FBI
14 and the DEA, it was somewhat delayed; is that right?

4:24PM 15 A Yeah, I don't think it happened for, like, three
16 weeks.

17 Q And part of the reason for that was that Peter
18 Gerace got the Swine Flu?

19 MR. COOPER: Objection, Judge. Calls for hearsay and
4:24PM 20 speculation.

21 THE COURT: Yeah, sustained.

22 Unless you've got another reason to put it in,
23 Mr. Singer.

24 MR. SINGER: Sure.

4:24PM 25 Q Did you learn about any type of illness that Peter

Lepiane - Cross - Singer

4:24PM 1 Gerace was suffering during the time period after he was
2 interacting with you on Halloween of 2009?

3 **MR. COOPER:** Objection, Judge.

4 **THE COURT:** Sustained.

4:24PM 5 Unless you can give me some relevance that's not
6 hearsay.

7 **Q** Did you make contact with Peter Gerace personally
8 during that time period?

9 **A** Yes.

4:24PM 10 **Q** And did he appear ill to you at any time during
11 that period of time?

12 **A** The contact was over the phone.

13 **Q** Okay. So no personal contact?

14 **A** There were -- between the time of the search and
4:25PM 15 the meeting with -- I made one home contact with him. I
16 don't know the date off the top of my head. But there was
17 home -- one home contact and at that time he did not appear
18 ill.

19 **Q** Okay. So, on November 4th of 2009, you have a
4:25PM 20 meeting with AUSA Bruce at the U.S. Attorney's Office,
21 correct?

22 **A** Yes.

23 **Q** And in attendance at that meeting were FBI Special
24 Agent Herbst?

4:25PM 25 **A** I believe so, yes.

Lepiane - Cross - Singer

4:25PM 1 Q Was there anything to refresh your memory of that?
2 For instance, if you's looked at your chrono notes on that,
3 would that refresh your memory as to who was at the meeting?

4 A If he was there, yeah, it would be in my notes.

4:25PM 5 Q Certainly.

6 MR. SINGER: So, Ms. Champoux, would you mind bringing
7 up on the witness's screen only Government Exhibit 3501B.

8 Page 34, Karen.

9 Thank you.

4:26PM 10 Q I'll direct your attention just to the middle of
11 that. And when you've had an opportunity to look through
12 those notes, if you would just look up at me, Mr. Lepiane.

13 A (Witness complies). Okay.

14 Q Did that refresh your memory as to whether

4:26PM 15 Mr. Herbst was at the meeting?

16 A Yes, sir.

17 Q And was Mr. Herbst at that meeting?

18 A He was.

19 Q And were there other members of the task force for

4:26PM 20 FBI also present at that meeting?

21 A There was, yes.

22 Q Who was also present at that meeting for the task
23 force?

24 A Bob Cottrell was present.

4:26PM 25 MR. SINGER: Ms. Champoux, if you could take that down.

Lepiane - Cross - Singer

4:26PM 1 Thank you.

2 Q And at this meeting, the four of you had a
3 discussion about further investigation of Peter Gerace
4 regarding the allegations?

4:26PM 5 A Yes.

6 Q And these allegations weren't just limited to your
7 violation, correct?

8 A They were discussing what their investigation was
9 and I would discuss what my violation was. So, yes, it

4:27PM 10 was --

11 Q Okay.

12 A -- not limited to just my violation.

13 Q Okay. Understood.

14 And one of the decisions that was made after that

4:27PM 15 meeting was that you were going to hold off on informing the
16 Court about the violation so that the FBI and the U.S.
17 Attorney's Office could continue their investigation?

18 A Yeah, they wanted me to wait until they had the
19 chance to talk to Gerace, Gerace sit down with the FBI and

4:27PM 20 have a conversation to see where that went.

21 Q Okay. So, fast forward another two days on
22 November 6th of 2009, you also had some contact with Special
23 Agent Herbst, is that correct?

24 A I could have, yes.

4:27PM 25 Q Okay. Would taking a look at your chronos refresh

Lepiane - Cross - Singer

4:27PM 1 your memory?

2 A Yes.

3 Q Certainly.

4 **MR. SINGER:** So, Ms. Champoux, 3501B again. And turn to

4:27PM 5 Page 3.

6 Q And you can take a look at that document, Mr.

7 Lepiane, and look up at me when you're done.

8 A What date is that again?

9 Q Sure. This was the 6th of November.

4:28PM 10 A Okay.

11 **MR. SINGER:** If you could bring that down.

12 Q Does that help you refresh your memory --

13 A Yes, it does.

14 Q -- about the --

4:28PM 15 A Yes.

16 Q And, so, part of the reason why Mr. Herbst

17 contacted you was there was this follow-up investigation

18 about whether Mr. Gerace had any unreported police contact

19 with Tonawanda Police Department?

4:28PM 20 A Correct.

21 Q And it was determined that there wasn't any such

22 contact, correct?

23 A Correct.

24 Q All right. And then on the 12th of November, did

4:28PM 25 you receive another call from Mr. Herbst with regard to the

Lepiane - Cross - Singer

4:28PM 1 status of what was happening with the meeting with DEA and
2 FBI?

3 A I may have, yes.

4 Q Certainly. So would taking a look at your chronos
4:29PM 5 help refresh your memory?

6 A Yes.

7 Q Sure. Why don't I hand you this one chrono I have
8 printed out.

9 A Thank you.

4:29PM 10 Q If you would just take a look at that.

11 A (Witness reviewing document.)

12 Q Is your memory refreshed now?

13 A Yes, sir.

14 Q And do you remember having some conversation on
4:29PM 15 that date with Mr. Herbst regarding what was happening with
16 the meeting?

17 A Yes.

18 Q And the reason why you two were conversing about
19 that is because you wanted to figure out if you were going to
4:29PM 20 inform the Court about this violation, correct?

21 A Yeah. I needed to know what the status of their
22 investigation, if I was going to include that in my
23 violation, yes.

24 Q And then on the 18th of November, is that when you
4:29PM 25 had the home visit that you mentioned?

Lepiane - Cross - Singer

4:29PM 1 A (Indicating.)

2 Q If you need to refer yourself to the notes, I'll

3 just direct you over to Page 5 and maybe that will help

4 refresh your memory. I'm sorry, Page 4.

4:30PM 5 A Yes. That's when I had the home visit with

6 Mr. Gerace, yes.

7 Q And do you recall whether or not you had further

8 contact with Mr. Herbst on the 19th of November regarding

9 what was happening with the meeting?

4:30PM 10 A Yes.

11 Q And I'm just going to note for the record are you

12 referring to your chronos now just to refresh your memory?

13 A Yes, sir.

14 Q So if you could take a look at those chronos and

4:30PM 15 when you're done, please look up at me.

16 A (Witness complies.) Okay.

17 Q If you just put that to the side, Mr. Lepiane.

18 So you did have contact on the 19th of November of

19 2009 with Mr. Herbst.

4:30PM 20 A Yes.

21 Q And you two discussed, in sum and substance, this

22 meeting and whether it was going to happen or whether it was

23 going to happen soon?

24 A Yes, I told him that we were moving forward with

4:31PM 25 our violation.

Lepiane - Cross - Singer

4:31PM 1 Q And in that phone conversation, Mr. Herbst also
2 indicated that he had planned to investigate the drug
3 conspiracy angle that you had testified on direct about,
4 correct?

4:31PM 5 A Yes.

6 Q Okay. And, so, on November 23rd of 2009, that's
7 the date that this meeting between the FBI and DEA actually
8 takes place?

9 A That's what I was told, yes.

4:31PM 10 Q And you were told that by Agent Herbst again?

11 A Yes.

12 Q And, so, Agent Herbst, he calls you after the
13 meeting takes place?

14 A I believe it was after, correct, yes.

4:31PM 15 Q And he indicated to you that there wasn't any good
16 information that came from that meeting from Peter Gerace,
17 correct?

18 A He told me they didn't think Mr. Gerace could
19 provide any info that was good, relevant.

4:31PM 20 Q But he also indicated to you, too, that he wanted
21 to continue to work with Peter Gerace?

22 A He said that he would continue to work with him,
23 yes.

24 Q And, so, based on that telephone call, that's when
4:32PM 25 you decided to inform the Court about the violation?

Lepiane - Cross - Singer

4:32PM 1 A So we had already decided that we were going to
2 inform the Court. But -- so it wasn't based on that
3 telephone call. We had already decided what our office was
4 going to do. It was whether or not we were going to include
4:32PM 5 anything related to new criminal activity in the report.
6 Q And that same date you actually met with Peter
7 Gerace to inform him about what was going to happen as far as
8 the violation, is that right?
9 A I believe so, yes.
4:32PM 10 Q And you needed to inform him about the location
11 monitoring condition that was going to be imposed?
12 A Yes, I informed him of the modification we were
13 requesting, yes.
14 Q And when you bring someone into your office about
4:32PM 15 modifications, is it common practice that you'll sit the
16 supervisee down and have them sign a piece of paper
17 indicating that they have knowledge of the new condition?
18 A Yeah. So, in order to add a condition to
19 somebody's supervised release, we either need the individual
4:33PM 20 to agree to it because they're entitled to a hearing. And
21 they can waive the hearing and agree to the modification or
22 they can choose not to do that and then we will just write to
23 the Court. So we do explain that with them either at their
24 house, the office or over the phone.
4:33PM 25 Q And as you recall, Peter Gerace on the 23rd of

Lepiane - Cross - Singer

4:33PM 1 November 2009 had agreed to waive the hearing and agreed to
2 the condition?

3 A He did, yes.

4 Q So I want to review a couple of things. So, it
4:33PM 5 looks like between August of 2009 to November of 2009, you
6 had several different phone calls or in-person meetings with
7 Special Agent Herbst from the FBI; is that right?

8 A Yeah, from August 31st, 2009 to November 23rd of
9 2009, yes.

4:33PM 10 Q So we're talking about you had the phone call and
11 the face-to-face meeting with Herbst on August 31st of 2009
12 when you were on duty?

13 A Yes.

14 Q You also had a couple of different contacts in the
4:33PM 15 September-October timeframe before the search regarding
16 surveillance?

17 A Yes.

18 Q You also had a face-to-face meeting on the date of
19 the search of the Pharaoh's Gentlemen's Club on the 31st of
4:34PM 20 20 -- sorry, 31st of October 2009?

21 A On the day of the search, we had face-to-face
22 contact, yes.

23 Q You had the con -- the phone call that we discussed
24 that happened on November 2nd of 2009?

4:34PM 25 A Yes.

Lepiane - Cross - Singer

4:34PM 1 Q You also had the phone call that happened on
2 November 6th of 2009?

3 A Yes.

4 Q You had the phone call that happened -- sorry.

4:34PM 5 You had the meeting that happened on the 4th of
6 November of 2009 between you, AUSA Bruce and Task Force
7 Officer Cottrell?

8 A Yes.

9 Q And Mr. Herbst was also part of that meeting?

4:34PM 10 A Yes.

11 Q You also had the call that occurred on the 12th of
12 November 2009, correct?

13 A Yes.

14 Q And then the call on the 19th of November of 2009?

4:34PM 15 A Yes.

16 Q Then you also had another conversation on the 23rd
17 of November 2009?

18 A Yes.

19 Q So you'd agree with me that that's at least about
4:35PM 20 nine different phone calls or meetings that you had with
21 Special Agent Herbst during that time period?

22 A Roughly, yes.

23 Q And with regard to Special Agent Bongiovanni,
24 during that same period, you'd received a call from Agent
4:35PM 25 Bongiovanni on the 3rd of November of 2009, correct?

Lepiane - Cross - Singer

4:35PM 1 A Yes.

2 Q But that was the only phone call that you received

3 from Agent Bongiovanni, correct?

4 A Correct.

4:35PM 5 Q And that was the only time that you spoke to Agent

6 Bongiovanni about Peter Gerace, correct?

7 A Correct.

8 Q He wasn't at the meeting that you had with Special

9 Agent Herbst, Task Force Officer Cottrell and AUSA Bruce,

4:35PM 10 correct?

11 A He was not.

12 Q In fact, no one from the DEA was present at that

13 meeting, either?

14 A No.

4:35PM 15 Q Now, did Special Agent Bongiovanni's call to you in

16 any way affect your decision to violate Peter Gerace for the

17 noncompliance?

18 A No.

19 Q So, Peter Gerace eventually gets violated and the

4:36PM 20 location monitoring's sanction is put in place by the Court,

21 is that correct?

22 A Yes.

23 Q And you had mentioned that it was a technical

24 violation. So that's one of the reasons why, perhaps, he

4:36PM 25 wasn't put in jail?

Lepiane - Cross - Singer

4:36PM 1 A Yes.

2 Q And he had learned of your intent to forward up the
3 location monitoring as opposed to just jail on the 23rd of
4 November 2009?

4:36PM 5 A Peter Gerace did, yes.

6 Q The fact that the violation was proceeding forward,
7 Officer Lepiane, and the fact that it was adjudged by the
8 Court, did that in any way prevent the FBI from bringing any
9 additional charges against Peter Gerace?

4:36PM 10 MR. COOPER: Objection, Judge, as to whether it would
11 have prevented the FBI from doing something. This witness
12 works for probation.

13 THE COURT: Yeah, you need to lay more of a foundation.

14 Q Officer Lepiane, you said you've been working with
4:37PM 15 the probation office for a number of years, is that right?

16 A 18 years.

17 Q 18 years. And you've worked supervising people and
18 supervised release is the probation officer responsible for
19 that, correct?

4:37PM 20 A Yes.

21 Q You've also supervised people who are responsible
22 for that duty now as a supervisor?

23 A Yes.

24 Q You've also stated that you've worked with state
4:37PM 25 and local authorities and federal authorities on multiple

Lepiane - Cross - Singer

4:37PM 1 different occasions; is that right?

2 A Yes.

3 Q And that included instances where either when they
4 informed you about whether someone who you were supervising
4:37PM 5 was committing violations of the law?

6 A Yes.

7 Q And also involved situations where you had learned
8 of situations where that was happening and sought their
9 assistance?

4:37PM 10 A Yes.

11 Q And the violations that you investigate in your
12 office, in your experience as a probation officer of 18
13 years, sometimes people are charged with substantive offenses
14 on the basis of that violation, correct?

4:37PM 15 A Yes.

16 Q So, for instance, if somebody is dealing drugs or
17 possessing drugs when they're on supervision, you might
18 violate them, correct?

19 A Yes.

4:38PM 20 Q But in your experience, other agencies might charge
21 them with a new crime, correct?

22 A Yes.

23 Q And it's based on the same thing?

24 A Yes.

4:38PM 25 Q And in your experience in that capacity, you've

Lepiane - Cross - Singer

4:38PM 1 seen situations where you violate someone but they still get
2 charged with a new crime?
3 A Yes.
4 Q So, again, based on your training and experience of
4:38PM 5 18 years, it's not impossible for someone to get charged with
6 a new crime based on information learned during a violation
7 investigation, correct?
8 A It's not impossible.
9 Q And there's nothing to your knowledge in your
4:38PM 10 training and experience that would prevent the FBI from
11 charging Peter Gerace for possession or use of cocaine,
12 correct?
13 A Yes.
14 Q In your capacity as a probation officer regarding
4:38PM 15 Mr. Gerace, did you ever learn of any new charges that were
16 levied by the FBI following their investigation?
17 A No.
18 Q 2009?
19 A No.
4:39PM 20 Q Okay.
21 MR. SINGER: That's all I have, Judge.
22 Thank you very much.
23 THE COURT: Redirect?
24 MR. COOPER: Yes, please.
4:39PM 25 REDIRECT EXAMINATION BY MR. COOPER:

Lepiane - Redirect - Cooper

4:39PM 1 **Q** Mr. Lepiane, you were just asked a second ago by
2 Mr. Singer if you know whether the FBI ever ended up charging
3 Peter Gerace substantively. Do you remember being asked that
4 question?

4:39PM 5 **A** Yes.

6 **Q** As you sit here today, do you know whether the
7 defendant lied to the FBI and prevented them from charging
8 the defendant?

9 **MR. SINGER:** Objection.

4:39PM 10 **THE COURT:** Sustained.

11 **Q** Do you know about conversations that occurred
12 between the FBI and Special Agent Bongiovanni, the defendant?

13 **A** (No response.)

14 **Q** Were you present for those conversations?

4:39PM 15 **A** No.

16 **Q** Do you know what the defendant said to the FBI?

17 **A** No.

18 **Q** Do you know what representations the defendant made
19 to the FBI?

4:39PM 20 **A** I don't.

21 **Q** Okay. You were also asked some questions on
22 cross-examination about the number of times Special Agent
23 Herbst called you versus the number of times that this
24 defendant called you. Do you remember that question?

4:39PM 25 **A** Yes.

Lepiane - Redirect - Cooper

4:39PM 1 Q Or those questions, I should say?

2 A Yes.

3 Q Did it appear from the numerous contacts that you

4 had with Special Agent Herbst that he was intent on

4:40PM 5 investigating Peter Gerace's illegal activity?

6 A Yes.

7 Q Did it appear that this defendant had an interest

8 in investigating Peter Gerace's illegal activity?

9 A I don't, I don't know what his intentions were.

4:40PM 10 Q Did he ever say to you I'm investigating Peter

11 Gerace?

12 A He never said that.

13 Q In fact, when he called you, you testified on

14 direct and cross-examination that he represented to you that

4:40PM 15 Peter Gerace was his confidential source of information, is

16 that correct?

17 A He said that Peter Gerace was a confidential source

18 of information in the past for the DEA, yes.

19 Q Okay. And other than him telling you that, did you

4:40PM 20 have any reason to know whether that was true or not?

21 A No.

22 Q What was your understanding of why the defendant

23 called you to tell you: Hey, Peter Gerace has been a

24 confidential source in the past?

4:40PM 25 A My understanding --

Lepiane - Redirect - Cooper

4:41PM 1 **MR. SINGER:** Objection to the form of the question.
2 Speculation.

3 **THE COURT:** Sustained.

4 **Q** You ultimately provided some information to the
4:41PM 5 defendant when he told you: Hey, Peter used to be a
6 confidential source, right?

7 **A** I, I told him that he can't actively cooperate
8 without the Court's permission.

9 **Q** Why did you tell him that?

4:41PM 10 **A** Because Mr. Gerace is required per his conditions
11 to abide by that exact condition that he not cooperate. So I
12 didn't want him to actively cooperate with the DEA or the FBI
13 or anybody and then he would have -- Mr. Gerace would have
14 got in trouble with the judge.

4:41PM 15 **Q** So now what I want to follow up on with you is the
16 defendant says this sentence to you that Peter Gerace used to
17 be a confidential source of information for him.

18 As a result of that, you tell him, hey, he can't
19 actively cooperate without Court permission, right?

4:41PM 20 **A** Yes.

21 **Q** What was your understanding of the defendant's
22 statement to you that caused you to give that as your
23 response?

24 **MR. SINGER:** Objection.

4:41PM 25 **MR. COOPER:** Well, Judge --

Lepiane - Redirect - Cooper

4:42PM 1 **THE COURT:** To the form of the question?

2 **MR. SINGER:** Yes.

3 **THE COURT:** Sustained.

4 **Q** What was the thought that went through your head

4:42PM 5 when the defendant said that to you?

6 **A** My thought was that Mr. Gerace used to be a

7 confidential source for the DEA, so he was calling to tell me

8 that and then whether or not he could do that now in this

9 instance to help him with his violation.

4:42PM 10 **Q** When you say "help him with his violation", what do

11 you mean?

12 **A** That Gerace had, had asked Agent Bongiovanni if,

13 hey, if I cooperate or provide information, will I not go to

14 jail, like will the violation result be less because of a

4:42PM 15 cooperation.

16 **Q** So is it your impression that the defendant was

17 calling you asking to find a way to help Gerace with his

18 violation; is that what you're saying?

19 **MR. SINGER:** Objection.

4:42PM 20 **A** My --

21 **THE COURT:** Sustained.

22 **Q** What was the impression that you got about why the

23 defendant was calling?

24 **MR. SINGER:** Objection.

4:42PM 25 **THE COURT:** Sustained.

Lepiane - Redirect - Cooper

4:42PM 1 **MR. SINGER:** Speculation.

2 **THE COURT:** Sustained.

3 **Q** You were also asked some questions on

4 cross-examination about the length of time that you were in

4:43PM 5 contact with the FBI after the search at Pharaoh's and before

6 the revision to Gerace's conditions. Do you remember those

7 questions?

8 **A** Yes.

9 **Q** Up until the conditions were revised, is it fair to

4:43PM 10 say Gerace did not have an ankle monitor on?

11 **A** He did not.

12 **Q** So the ankle monitor didn't go on until he signed

13 that piece of paper and acknowledged the new condition?

14 **A** It didn't go on until the Court ordered it which

4:43PM 15 would happen after he agreed to the condition and we

16 submitted a report (indicating).

17 **Q** So, could Peter Gerace have been back to Pharaoh's

18 after the search that you conducted?

19 **A** Yes.

4:43PM 20 **Q** Okay. You were asked about whether you found drugs

21 at Pharaoh's when you searched, is that right?

22 **A** I was asked, yes.

23 **Q** Was that like a busy popping time at the club when

24 you went there to search?

4:43PM 25 **A** No.

Lepiane - Redirect - Cooper

4:43PM 1 **MR. SINGER:** Objection.

2 **THE COURT:** I'm sorry?

3 **MR. SINGER:** I withdraw the objection.

4 **THE COURT:** Okay.

4:44PM 5 A No, it was the morning. The club was closed.

6 Q Not a lot of customers there?

7 A No, sir.

8 Q No dancers there?

9 A No, sir.

4:44PM 10 Q You mentioned on cross-examination that DEA would

11 have had to get Court permission in order to actively use

12 Peter Gerace as a confidential source; is that correct?

13 A Peter Gerace would have had to get the Court's

14 permission to cooperate. DEA doesn't reach out -- for

4:44PM 15 someone who's on supervised release, if they want to

16 cooperate, normally an agent would come to us and say, hey,

17 this person wants to cooperate. And then we would write a

18 letter -- we'd talk to actually the U.S. Attorney's Office.

19 All parties would be on the same page and they would agree to

4:45PM 20 the stipulations of a cooperation agreement and we would

21 submit that to the court --

22 Q And that's --

23 A -- for approval.

24 Q And that's something that generates paperwork on

4:45PM 25 your end if it happens; is that right?

Lepiane - Redirect - Cooper

4:45PM 1 A Yes.

2 Q Okay. You mentioned that you became the

3 supervising officer for Peter Gerace on August 31 of 2009, is

4 that correct?

4:45PM 5 A Yes.

6 Q Are there any -- have you reviewed the file of your

7 office's supervision of Peter Gerace?

8 A Yes.

9 Q Is there any indication that he ever applied prior

4:45PM 10 to your involvement to be working as a confidential source?

11 A No.

12 Q Did you ever get contacted prior to the search at

13 Pharaoh's about, hey, could we bring Peter Gerace in and use

14 him?

4:45PM 15 A I did not, no.

16 Q Are there any chronos or notes in your file that

17 indicate that that happened?

18 A There are none.

19 MR. COOPER: I have nothing further, Judge. Thank you.

4:45PM 20 THE COURT: Anything more, Mr. Singer?

21 MR. SINGER: Just brief, Judge.

22 **RECROSS-EXAMINATION BY MR. SINGER:**

23 Q Officer Lepiane, as part of your duties, you've

24 dealt with people who sometimes want to cooperate to lessen

4:46PM 25 the violation they're looking at?

Lepiane - Recross - Singer

4:46PM

1 A Yes.

2 Q And in your experience of 18 years, if they're not
3 going to get anything in return, does sometimes that cause
4 them not could cooperate any more?

4:46PM

5 MR. COOPER: Objection. Calls for speculation.

6 THE COURT: Overruled.

7 A Sometimes.

8 Q Mr. Cooper asked you about the ankle monitor
9 affixing and the Court order on that being delayed; do you
10 recall that?

4:46PM

11 A It wasn't delayed but, yeah, we have to wait until
12 the Court signs off for us to put him on the bracelet,
13 correct.

14 Q And as you testified on cross-examination when I
15 was up here earlier, the reason for -- sorry. The reason why
16 you never informed the Court back in early November was at
17 the FBI's and U.S. Attorney Office's request, right?

4:46PM

18 A That wasn't the sole reason. We were still
19 investigating whether or not he was allowed to work there. I
20 had contact with the State Liquor Authority relating to that.
21 There was, I don't want it -- I don't want to say that we did
22 not inform the Court because the FBI asked us to do that. It
23 was in conjunction with the U.S. Attorney's Office because
24 they're the ones who have to prosecute violations.

4:47PM

4:47PM

25 So, we were still doing our investigation. Part of

Lepiane - Recross - Singer

4:47PM 1 the investigation was whether or not he was going to be
2 charged. So, had he been charged, the report to the Court
3 would have probably not been an ankle bracelet, it would have
4 probably been a violation.

4:47PM 5 Q I guess the big takeaway is these things don't
6 happen overnight, correct?

7 A Correct.

8 Q Sometimes you need to investigate something
9 further, is that right?

4:47PM 10 A Yes.

11 Q Sometimes you need to coordinate with the U.S.
12 Attorney's further on something?

13 A Yes.

14 Q They get to make a call on when the violation
4:47PM 15 should be forwarded up to the Court, correct?

16 A Then we have to make the call, yes.

17 Q And the U.S. Attorney's Office, they're somebody
18 that you work with on a regular basis, right?

19 A Yes.

4:48PM 20 Q So, if they're going to ask you for an extra couple
21 days, that's something that you're generally going to
22 respect?

23 A It depends. It honestly depends.

24 Q But it seems like in this situation, you did

4:48PM 25 respect that request?

Lepiane - Further Redirect - Cooper

4:48PM 1 A We did not delay, Mr. Singer, his -- the report to
2 the Court was not delayed because of the U.S. Attorney's
3 Office, the FBI, anyone. It was our own investigation.

4 Q Understand.

4:48PM 5 MR. SINGER: I have no further questions, Judge. Thank
6 you.

7 THE COURT: Anything more?

8 MR. COOPER: Just one second, please, Judge.

9 (WHEREUPON, a discussion was held off the record.)

4:48PM 10 MR. COOPER: Just one question, Judge.

11 FURTHER REDIRECT EXAMINATION BY MR. COOPER:

12 Q You were asked some questions, Mr. Lepiane, about
13 the delay -- or I guess you're saying there wasn't a delay --
14 in the process of processing the violation; is that correct.

4:48PM 15 A Yes.

16 Q At any time after the search at Pharaoh's, did
17 Peter Gerace ever reach out and ask for permission to
18 cooperate with the DEA?

19 A He didn't ask for permission, no.

4:48PM 20 MR. COOPER: Okay. No further questions, Judge.

21 RECROSS-EXAMINATION BY MR. COOPER:

22 Q Mr. Lepiane, in your experience -- so you just
23 testified that Peter Gerace never reached out to you to say,
24 hey, can I have permission to be a confidential source?

4:49PM 25 A He never asked for permission, no.

Lepiane - Recross - Singer

4:49PM 1 Q But in your experience as a probation officer,
2 you're also aware that people sometimes can act as sources of
3 information, right?

4 A Yes.

4:49PM 5 Q And that's different than being a confidential
6 source, correct?

7 A So the, the difference I'm talking about is
8 actively cooperating would be like making purchases, wearing
9 wires. That's active cooperation --

4:49PM 10 Q Mm-mm.

11 A -- that they need the Court permission. Providing
12 information, they don't need the Court's permission.

13 Q Correct. So there's no court permission required
14 to provide information on somebody, correct?

4:49PM 15 A Correct.

16 Q And the specific conversation you had with
17 Mr. Bongiovanni about Mr. Gerace being a confidential source
18 of information, you don't know when that information may have
19 been provided, correct?

4:49PM 20 A I, I don't know.

21 Q Okay.

22 A Just said past.

23 Q Thank you.

24 MR. SINGER: No further questions, Judge.

4:50PM 25 MR. COOPER: I'm finished, Judge.

Lepiane - Recross - Singer

4:50PM

1 **THE COURT:** You can step down.
2 **(WHEREUPON,** witness excused.)
3 **(WHEREUPON,** excerpt ended and proceedings continued.)
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Lepiane - Recross - Singer

4:50PM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

* * *

CERTIFICATE OF REPORTER

In accordance with 28, U.S.C., 753(b), I
certify that these original notes are a true and correct
record of proceedings in the United States District Court
of the Western District of New York before the
Honorable Lawrence J. Vilardo on August 5, 2024.

S/ Diane S. Martens

Diane S. Martens, FCRR, RPR
Official Court Reporter